

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1293-MWD-E TCEQ ID: RN102919941 CASE NO.: 34401
RESPONDENT NAME: City of Mont Belvieu

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Cotton Bayou Wastewater Treatment Plant, located approximately 1.4 miles north of Interstate Highway 10 and 0.6 mile east of Eagle Drive on the east side of Mont Belvieu, Chambers County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 31, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Cynthia McKaughan, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0735; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Nick Dixon, Mayor, City of Mont Belvieu, P.O. Box 1048, Mont Belvieu, Texas 77580 Mr. Bryan Easum, City Administrator, City of Mont Belvieu, P.O. Box 1048, Mont Belvieu, Texas 77580 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 24, 2007</p> <p>Date of NOV/NOE Relating to this Case: July 23, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. One violation was documented.</p> <p>WATER</p> <p>Failure to maintain authorization for the discharge of wastewater. Specifically, the Respondent did not renew TPDES Permit No. 11030001, which expired on February 1, 2007, and is continuing to discharge wastewater from the Facility without authorization [30 TEX. ADMIN. CODE §§ 305.65 and 305.125(1), TPDES Permit No. 11030001, Permit Condition No. 4.c., and TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$18,900</p> <p>Total Deferred: \$3,780 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$15,120</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on May 11, 2007, the Respondent submitted a new permit application to the TCEQ, which was declared administratively complete on June 15, 2007.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 180 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 11030001;</p> <p>b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such request or by any other deadline specified in writing; and</p> <p>c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES

Assigned

30-Jul-2007

PCW

20-Aug-2007

Screening

9-Aug-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent City of Mont Belvieu

Reg. Ent. Ref. No. RN102919941

Facility/Site Region 12-Houston

Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No. 34401

Docket No. 2007-1293-MWD-E

Media Program(s) Water Quality

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Catherine Albrecht

EC's Team Enforcement Team 1

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$17,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

8% Enhancement

Subtotals 2, 3, & 7

\$1,400

Notes

The Respondent has four NOV's for other violations.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5

\$0

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement*

Subtotal 6

\$0

Total EB Amounts

\$768

Approx. Cost of Compliance

\$10,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal

\$18,900

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

\$18,900

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$18,900

DEFERRAL

20%

Reduction

Adjustment

-\$3,780

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$15,120

Screening Date 9-Aug-2007

Docket No. 2007-1293-MWD-E

PCW

Respondent City of Mont Belvieu

Policy Revision 2 (September 2002)

Case ID No. 34401

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102919941

Media [Statute] Water Quality

Enf. Coordinator Catherine Albrecht

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 8%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The Respondent has four NOVs for other violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 8%

Screening Date 9-Aug-2007 Respondent City of Mont Belvieu Case ID No. 34401 Reg. Ent. Reference No. RN102919941 Media [Statute] Water Quality Enf. Coordinator Catherine Albrecht Violation Number 1	Docket No. 2007-1293-MWD-E <div style="text-align: right;">PCW</div> <div style="text-align: right; font-size: small;"> Policy Revision 2 (September 2002) PCW Revision June 26, 2007 </div>																									
Rule Cite(s) 30 Tex. Admin. Code §§ 305.65 and 305.125(1), TPDES Permit No. 11030001, Permit Condition No. 4.c., and Tex. Water Code § 26.121(a)																										
Violation Description Failed to maintain authorization for the discharge of wastewater. Specifically, the City did not renew TPDES Permit No. 11030001, which expired on February 1, 2007, and is continuing to discharge wastewater from the Facility without authorization.																										
Base Penalty \$10,000																										
>> Environmental, Property and Human Health Matrix																										
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 20%;">Major</th> <th style="width: 20%;">Moderate</th> <th style="width: 20%;">Minor</th> <th style="width: 30%;"></th> </tr> </thead> <tbody> <tr> <td>Release</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Potential</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="4"></td> <td>Percent 0%</td> </tr> </tbody> </table>		Major	Moderate	Minor		Release					Actual					Potential									Percent 0%
	Major	Moderate	Minor																							
Release																										
Actual																										
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				Percent 0%																						
>> Programmatic Matrix																										
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Falsification	Major	Moderate	Minor																							
	x																									
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Matrix Notes	100% of the rule requirement was not met.																									
Adjustment \$7,500																										
\$2,500																										
Violation Events																										
<table style="width: 100%;"> <tr> <td style="width: 40%;"> Number of Violation Events 7 </td> <td style="width: 20%; text-align: center;">189</td> <td style="width: 40%;"> Number of violation days </td> </tr> </table> <table style="width: 100%;"> <tr> <td style="width: 20%; vertical-align: top;"> <div style="font-size: x-small;">mark only one with an x</div> </td> <td style="width: 20%;"> <div style="border: 1px solid black; padding: 2px;">daily</div> <div style="border: 1px solid black; padding: 2px;">monthly</div> <div style="border: 1px solid black; padding: 2px;">quarterly</div> <div style="border: 1px solid black; padding: 2px;">semiannual</div> <div style="border: 1px solid black; padding: 2px;">annual</div> <div style="border: 1px solid black; padding: 2px;">single event</div> </td> <td style="width: 60%;"></td> </tr> </table> <div style="border: 1px solid black; padding: 5px; text-align: center;"> Seven monthly events are recommended from the date TPDES permit expired on February 1, 2007 to the screening date of August 9, 2007. </div>		Number of Violation Events 7	189	Number of violation days	<div style="font-size: x-small;">mark only one with an x</div>	<div style="border: 1px solid black; padding: 2px;">daily</div> <div style="border: 1px solid black; padding: 2px;">monthly</div> <div style="border: 1px solid black; padding: 2px;">quarterly</div> <div style="border: 1px solid black; padding: 2px;">semiannual</div> <div style="border: 1px solid black; padding: 2px;">annual</div> <div style="border: 1px solid black; padding: 2px;">single event</div>																				
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Violation Base Penalty \$17,500																										
Economic Benefit (EB) for this violation																										
<table style="width: 100%;"> <tr> <td style="width: 50%;"> Estimated EB Amount \$768 </td> <td style="width: 50%;"> Statutory Limit Test </td> </tr> </table>		Estimated EB Amount \$768	Statutory Limit Test																							
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Violation Final Penalty Total \$18,900																										
This violation Final Assessed Penalty (adjusted for limits) \$18,900																										

Economic Benefit Worksheet**Respondent** City of Mont Belvieu**Case ID No.** 34401**Reg. Ent. Reference No.** RN102919941**Media** Water Quality**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$10,000	1-Feb-2007	15-Aug-2008	1.5	\$768	n/a	\$768
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs of preparing and submitting a new permit application to obtain authorization to discharge wastewater. Date required is the date the previous permit expired. Final date is the projected date to obtain a new TPDES permit.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance**

\$10,000

TOTAL

\$768

Compliance History

Customer/Respondent/Owner-Operator:	CN600622856	City of Mont Belvieu	Classification: AVERAGE Rating: 2.51
Regulated Entity:	RN102919941	COTTON BAYOU WWTP	Classification: AVERAGE Site Rating: 1.53
ID Number(s):	WASTEWATER	PERMIT	WQ0011030001
	WASTEWATER	EPA ID	TX0053317
	WASTEWATER	PERMIT	WQ0014807000
	WASTEWATER	PERMIT	TX0053317000
	WASTEWATER	PERMIT	TPDES0053317
	WASTEWATER	LICENSING	LICENSE WQ0011030001

Location: Approximately 1.4 miles north of Interstate Highway 10 and 0.6 mile east of Eagle Drive on the east side of Mont Belvieu in Chambers County

Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: August 09, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 09, 2002 to August 09, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Catherine Albrecht Phone: (713)767-3672

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
 N/A

B. Any criminal convictions of the state of Texas and the federal government.
 N/A

C. Chronic excessive emissions events.
 N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 02/27/2003 (184615)
- 2 06/10/2003 (184619)
- 3 02/26/2004 (306635)
- 4 03/31/2004 (332924)
- 5 05/12/2004 (270102)
- 6 06/15/2004 (275707)
- 7 09/21/2004 (371034)
- 8 02/25/2005 (384343)
- 9 03/28/2005 (384344)
- 10 02/27/2006 (472933)
- 11 04/17/2006 (472934)
- 12 06/07/2006 (464458)
- 13 04/27/2007 (556566)
- 14 07/23/2007 (568108)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/31/2004 (332924)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)
 Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 05/11/2004 (270102)
 Self Report? NO Classification: Moderate
 Citation: TWC Chapter 26 26.121(a)(1)
 Rqmt Prov: PERMIT TPDES Permit No. 11030-001
 Description: Failure to operate and maintain the collection system to prevent the unauthorized discharge of untreated wastewater.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 317 317.4(a)(8)

30 TAC Chapter 317 317.7(i)

Rqmt Prov: PERMIT TPDES Permit No. 11030-001

Description: Failure to test and certify as operative, the backflow prevention device on the potable water line to the wastewater treatment plant (WWTP) within the past year.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: PERMIT TPDES Permit No. 11030-001

Description: Failure to provide the Toxicity Characteristic Leaching Procedure (TCLP) analyses for review during the investigation.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)

Rqmt Prov: PERMIT TPDES Permit No. 11030-001

Description: Failure to properly complete the 04/03, 07/03, 12/03, and 01/04 discharge monitoring reports (DMRs).

Date: 09/21/2004 (371034)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOL FOR MONIT PER OR PIPE

Date: 06/06/2006 (464458)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)

30 TAC Chapter 317 317.4(d)(G)

Description: Failure to properly operate and maintain the wastewater treatment plant (WWTP).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF MONT BELVIEU
RN102919941**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1293-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Mont Belvieu ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates the Cotton Bayou Wastewater Treatment Plant located approximately 1.4 miles north of Interstate Highway 10 and 0.6 mile east of Eagle Drive on the east side of Mont Belvieu in Chambers County, Texas (the "Facility").
2. The City has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about July 28, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eighteen Thousand Nine Hundred Dollars (\$18,900) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The City has paid Fifteen Thousand One Hundred Twenty Dollars (\$15,120) of the administrative penalty and Three Thousand Seven Hundred Eighty Dollars (\$3,780) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the City, on May 11, 2007, submitted a new permit application to the TCEQ, which was declared administratively complete on June 15, 2007.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to maintain authorization for the discharge of wastewater, in violation of 30 TEX. ADMIN. CODE §§ 305.65 and 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 11030001, Permit Condition No. 4.c., and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on May 24, 2007. Specifically, the City did not renew TPDES Permit No. 11030001, which expired on February 1, 2007, and is continuing to discharge wastewater from the Facility without authorization.

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Mont Belvieu, Docket No. 2007-1293-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the City shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 180 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 11030001;
 - b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such request or by any other deadline specified in writing; and
 - c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained. Written certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance and shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director


12/11/07
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

10/24/07
Date

Bryan Easum

Name (Printed or typed)
Authorized Representative of
City of Mont Belvieu

City Administrator

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

